

MAY - 4 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal)
Communications Services)

TO: The Commission

COMMENTS ON OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

American Personal Communications ("APC")^{1/}, pursuant to Section 1.429(g) of the Commission's rules, hereby files comments in support of the Oppositions to Petitions for Reconsideration filed by Cox Enterprises, Inc. ("Cox") and Omnipoint Communications, Inc. ("Omnipoint") in the above-captioned proceeding.^{2/} Cox and Omnipoint have opposed the petition of Advanced Cordless Technologies, Inc. ("ACT"), as relying on "rumor," "supplementary hysteria," and legally irrelevant factors to contend that the pioneer preference grantees violated the Commission's ex parte rules. See Cox Opposition at 2-4; Omnipoint Opposition at 3-6. APC agrees with Cox and Omnipoint -- based on the facts presented in their Oppositions and on analysis of ACT's unfounded and

^{1/} American PCS, L.P., d/b/a American Personal Communications ("APC"), a partnership in which APC, Inc. is the managing general partner and The Washington Post Company is an investor/limited partner.

^{2/} The Commission has awarded APC, Cox and Omnipoint pioneer preferences for their respective contributions to the development of broadband PCS technologies. Third Report and Order, Gen. Docket No. 90-314, FCC 93-550, adopted December 23, 1993, released February 3, 1994.

erroneous allegations against APC -- that ACT's petition completely lacks merit and therefore should be denied.

I. ACT'S CLAIMS OF IMPROPER EX PARTE CONTACTS PROVIDE NO BASIS FOR RECONSIDERING THE GRANTS OF THE PIONEER PREFERENCES.

As Cox and Omnipoint make clear, ACT's petition, stripped of its rhetoric, simply reiterates unfounded allegations previously raised by Pacific Bell and amounts to little more than a claim that the Third Report and Order was preceded by many ex parte contacts.^{3/} Cox Opposition at 5; Omnipoint Opposition at 3. This charge is irrelevant since the Commission's rules do not limit the number of permissible ex parte contacts.^{4/} Nevertheless, Cox and Omnipoint have further exposed the speciousness of ACT's claim by

^{3/}Based on numerous prior conversations with legal officials for the FCC, including the General Counsel's office, APC agrees with Cox and Omnipoint that there is a clear and defined distinction between the restricted and non-restricted aspects of this proceeding. Cox Opposition at 4-5; Omnipoint Opposition at 5-6. APC fully honored this clear and defined distinction and did not discuss any issues related to the restricted aspects of this proceeding in its permissible ex parte presentations.

^{4/}Furthermore, those who have opposed APC's preference and APC's general PCS proposal also have reported numerous ex parte contacts. Bell Atlantic reported 32 ex parte contacts in 1993 and 6 in the first quarter of 1994; Pacific Bell reported 19 in 1993 and 10 in the first quarter of 1994; CTIA reported 68 in 1993 and 18 in the first quarter of 1994. These numbers do not demonstrate that any of these parties crossed the line between permissible rule making topics and the merits of an individual preference request. Similarly, the number of APC's contacts has no bearing on the propriety of the topics discussed in those contacts.

demonstrating that their ex parte presentations also were consistent with the Commission's rules.

As for the substance of APC's contacts with Commission personnel, they dealt exclusively with permissible rule making issues. ACT can point to no facts at all to the contrary because these facts do not exist.^{5/}

ACT also criticizes APC's ex parte notifications. Under a correct reading of the Commission's rules, APC's notices were more than sufficient. But ACT's criticism is based on a misreading of Section 1.1206(a)(2), which it paraphrases as requiring "that a written report be filed concerning contacts that are made". Act Petition at 25. In fact, the rule requires such a report only when the "presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings". 47 C.F.R. § 1.1206(a)(2) (emphasis added). Moreover, in adopting the rule, the Commission made it clear that "persons making oral presentations that substantially

^{5/}ACT's argument misses its mark on other counts as well. First, ACT fails to point out that APC made only one contact in the month before it was tentatively awarded a pioneer's preference on October 8, 1992, and that was about PCS rule making issues. Second, ACT fails to point out that APC had far more contacts in the month before the PCS rule making decision than in the month before the preference rule making decision. Third, ACT's claim that APC "stop[ped] abruptly" making contacts after December 23, 1993, when its pioneer preference grant was finalized, ignores the fact that APC's sustained interest in PCS rule making issues continued to generate permissible presentations to the Commission after the year-end holiday lull.

reiterate their own written comments need not file such a memorandum."^{6/}

When APC limited its discussions to matters that were contained in its documents already on file, APC was not required by the Commission's Rules to file any notifications whatsoever. APC, however, for the sake of complete disclosure, chose to report any meetings that occurred even if the discussions did not extend beyond matters already contained in written submissions,^{7/} the contacts with Commission personnel were quite casual or they otherwise did not constitute "presentations" in a literal sense. On those few occasions when APC's discussions raised matters that were outside the scope of its filed submissions, those matters were properly summarized in APC's notifications.

II. ACT'S PETITION REITERATES CLAIMS THAT WERE
DISMISSED IN THE NARROWBAND PCS
PROCEEDING.

Omnipoint's Opposition also raises the important procedural fact that ACT's petition for reconsideration of the narrowband PCS pioneer preference decision in the First Report and Order was dismissed on statutory grounds because it was

^{6/} First Report, 2 F.C.C. Rcd. 3021, 3032 (1982).

^{7/} Undersigned counsel advised this course because Commissioner offices and some other offices have come, as a matter of course, to expect the filing of such notices even though the substance of conversations does not go beyond written submissions.

filed 73 days late.^{8/} Omnipoint Opposition at 2-3. Three days after the dismissal, ACT filed the instant petition challenging the *broadband* PCS pioneer preferences, even though the Commission did not address ACT's pioneer preference application in the Third Report and Order. Id. APC agrees with Omnipoint that ACT's petition is procedurally improper and therefore should be dismissed.^{9/}

CONCLUSION

APC supports Cox's and Omnipoint's oppositions to ACT's petition for reconsideration. As Cox and Omnipoint have demonstrated -- and APC has further documented in these supporting comments -- the petition is based on speculation and innuendo and does not call into question the propriety of APC's, Cox's or Omnipoint's permissible ex parte contacts. Additionally, ACT's petition was filed simply to reassert

^{8/}APC filed its Opposition to petitions for reconsideration of the Third Report and Order less than one week late. The filing deadline for Oppositions is not statutory. Furthermore, APC has demonstrated "good cause" for its late filing.

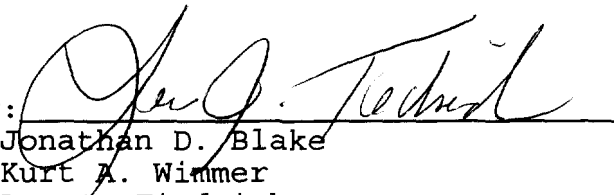
^{9/}As Omnipoint also discusses, ACT's petition violates the Commission's prescribed page limitations. Omnipoint Opposition to Motion to Strike at 1-3.

claims that were properly dismissed on statutory grounds in the narrowband aspects of this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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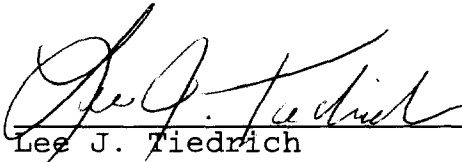
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